



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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J.W. MacKay, Jr.
Route 9, Box 185, Highway 49
Mt. Pleasant, Texas 75455

Dear Mr. MacKay:

The Commission has considered your petition, CP 00-1, requesting that the Commission issue a rule requiring that all non-wood baseball bats perform like wood bats. The Commission considered the information that you provided, comments on the petition by interested persons, and a package of written materials prepared by the staff. Based on its review of these materials, and for the reasons discussed below, the Commission voted to deny the petition.

As you know, the Commission's regulations specify that any person may file a petition requesting that the Commission initiate a proceeding to issue a regulation under any of the statutes administered by the Commission. 16 C.F.R. § 1051.2(a). These regulations also set out factors for the Commission to consider in determining whether to grant or deny a petition. Three of the factors are applicable here: (1) whether the product presents an unreasonable risk of injury; (2) whether a rule is reasonably necessary to eliminate the risk of injury; and (3) whether failure to initiate rulemaking would unreasonably expose the petitioner or other consumers to the risk of injury alleged by the petition. 16 C.F.R. § 1051.9(a). Based on consideration of these factors, the Commission voted to deny the petition.

For the Commission to issue a safety standard under the Consumer Product Safety Act, the Commission must find that the rule is "reasonably necessary to eliminate or reduce an unreasonable risk of injury" associated with the product at issue. 15 U.S.C. § 2058(f)(3)(A). Thus, the principal finding that the Commission would have to make before issuing a final rule mandating a safety standard for non-wood bats is that non-wood bats pose an unreasonable risk of injury and that a mandatory standard is necessary to address that risk. A determination of unreasonable risk involves balancing the likelihood and severity of injury with any harm that a regulation could impose on manufacturers and consumers. See Southland Mower v. Consumer 619 F. 2d 499 (D.C. Cir. 1980).

Whether the product presents an unreasonable risk of injury. In considering whether a product presents an unreasonable risk of injury, the Commission looks at the likelihood and severity of injury. Your petition claims that in the 1990's manufacturers created non-wood bats with greatly increased performance and that this increased performance poses an unreasonable risk of injury to pitchers. However, available incident data are not adequate to show increasing injuries to pitchers over the period of time that bat performance increased. Much of the data is not detailed enough to determine injuries to pitchers from batted balls. Overall, data reported through the National Injury Surveillance System ("NEISS") showed a significant decrease in injuries associated with baseball and softball during the 1990's. Data concerning deaths indicate that non-wood bats have been involved in deaths. Of 51 deaths due to ball impact from January 1991 to January 2001, 17 were identified as being due to impact with a batted ball. Of those 17, 8 were reported to have involved non-wood bats. But, deaths also occurred involving wood bats (2) and thrown balls (18 deaths). In many of the deaths the circumstances are not clear (in 16 cases it is not known whether the ball was thrown or batted, and in 7 of the cases involving batted-ball impact the type of bat is not known).

Data from other sources are also not clear or detailed enough to determine that an increase in injuries has occurred with an increase in bat performance. Injury reports from the National Collegiate Athletic Association ("NCAA") are not complete, but the data that do exist do not show a significant increase in injuries to pitchers during the 1990's. The Little League does not keep track of injuries as such, but rather of secondary medical insurance claims. This information may or may not reflect actual injuries. But, Little League reports those claims have actually decreased 76% from 1992 to 2000. Information included with the petition indicates that injuries can occur with balls batted from non-wood bats. But, this information is not a statistical sample, so one cannot draw conclusions about any trends in injuries during the years when bat performance apparently was increasing.

Thus, available incident data are not sufficient to indicate that non-wood bats may pose an unreasonable risk of injury.

In addition to incident data, the Commission also considered the question of a pitcher's reaction time being too short to avoid injury from a ball batted with a non-wood bat. The Commission considered studies by Dr. Richard Brandt and JJ Crisco. These studies indicate that some non-wood bats in some test conditions may produce speeds near a pitcher's limit to react. However, this does not translate directly to information on frequency and severity of injury with non-wood bats. The fact that, in theory, a ball batted off a non-wood bat may come at a speed near a pitcher's reaction time does not necessarily mean a pitcher will sustain injury. Factors other than reaction time may also determine whether a pitcher is injured.

As for severity of injury, being struck by any batted ball can produce serious injury. You have provided no information, nor is the Commission aware of any, indicating that injuries produced by balls batted with non-wood bats are more severe than those involving wood bats.

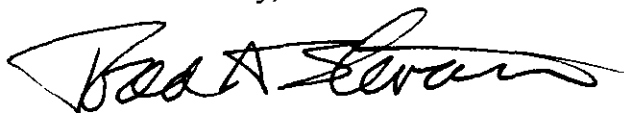
Whether a rule is reasonably necessary to address an unreasonable risk of injury. A key aspect be able to address

the risk at issue. Developing requirements for non-wood bats would be a complex matter. Essentially, the Commission would need to determine what is an unsafe level of play and what performance requirements for bats are necessary to bring them to a safe level. Current data and information are not sufficient for this task. Any bat, wood or non-wood can produce injuries or death. The Commission cannot simply decree that non-wood bats must perform like wood bats. It cannot presume that wood bats are safe and non-wood bats are unsafe. Rather, it would have to show that performance requirements are necessary to change bat performance from some unreasonable level to an acceptable level. The Commission does not have information to determine where that line should be drawn.

Whether failure to issue a rule would unreasonably expose petitioners and others to unreasonable risk. As discussed above, indicate that non-wood bats pose an unreasonable risk of injury. Clearly, bats can pose some risk of injury. However, it appears that the NCAA, ASTM, the Amateur Softball Association and the National Federation of State High School Associations are actively involved in evaluating the performance of non-wood bats and their possible impact on safety. The Commission cannot say at this time that their efforts are insufficient. The Commission is asking the staff to continue monitoring bat performance and bat-related incidents and the measures taken by these organizations to address the safety of non-wood bats.

Conclusion. Based on its review of all the available information, the Commission concluded that a mandatory standard is not reasonably necessary to address an unreasonable risk of injury posed by non-wood bats. Thank you for bringing this safety issue to the Commission's attention. The staff will be monitoring bat-related incidents and the actions of the organizations mentioned above.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Stevenson", with a stylized flourish at the end.

Todd Stevenson
Secretary